H623-10

101ST CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 101-325
Part 1

CALCULATION OF PREMIUM PAY FOR UNCONTROLLABLE OVERTIME DUTY

OCTOBER 31, 1989.—Ordered to be printed

Mr. FORD of Michigan, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 215]

[Including cost estimate of the Congressional Budget Office]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 215) to amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a Federal employee, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment (stated in terms of the page and line numbers of the introduced bill) is as follows:

Page 2, lines 14 and 15, strike "after September 30, 1989." and insert "on or after the first day of the first applicable pay period beginning more than 60 days after the date of enactment of this Act."

EXPLANATION OF AMENDMENT

The committee amendment changes the effective date of the bill to make it effective with respect to overtime performed on or after the first day of the first applicable pay period beginning more than 60 days after the date of enactment.

PURPOSE

The purpose of this legislation is to change the method by which premium pay is determined for irregular, unscheduled, overtime duty performed by a Federal employee.

COMMITTEE ACTION

On October 24, 1989, the Subcommittee on Compensation and Employee Benefits, by voice vote, approved H.R. 215, with an amendment, for full committee consideration. On October 25, 1989, the Committee on Post Office and Civil Service, by voice vote and with a quorum present, ordered the bill favorably reported with an amendment.

On June 15, 1988, during the 100th Congress, the Subcommittee on Compensation and Employee Benefits held a hearing on an identical bill, H.R. 1076 (Serial No. 100-58). Testimony was received from a representative of the Office of Personnel Management (OPM) and from representatives of Federal employees.

SUMMARY

H.R. 215 would revise the calculation of premium pay for administratively uncontrollable overtime (AUO) duty performed by certain Federal employees. AUO is compensation for those who must work substantial amounts of irregular, unscheduled, overtime the hours of which cannot be controlled administratively. Such work is compensated at a maximum rate of 25 percent of the employee's rate of basic pay, except that those employees whose rates of basic pay exceed the minimum rate for GS-10 (currently $26,261) are limited to a maximum of 25 percent of the minimum rate for GS-10. H.R. 215 eliminates the GS-10 limit on maximum basic pay for purposes of computing administratively uncontrollable overtime.

STATEMENT

Section 5545(c)(2) of title 5, United States Code, authorizes the head of agency, with the approval of the Office of Personnel Management, to provide that an employee in a position in which the hours of duty cannot be controlled administratively and which requires substantial amounts of irregular, unscheduled, overtime duty shall receive premium pay for this duty on an annual basis. Federal employees who perform this type of overtime duty are generally responsible for recognizing, without supervision, the circumstances which require them to remain on duty.

The premium pay authorized by this section is provided on an annual basis and is in lieu of other types of premium pay available to Federal employees, except that premium pay for regularly scheduled overtime, night and Sunday duty, and holiday duty may be paid in addition to premium pay provided by section 5545(c)(2).

AUO is determined as an appropriate percentage, not less than 10 percent and not more than 25 percent, of the rate of basic pay for the position. Employees whose rates of basic pay are greater than the minimum rate of basic pay for GS-10, are limited to 25 percent of the minimum rate of basic pay for GS-10. The appropriate percentage is determined by taking into account the frequency and duration of irregular, unscheduled, overtime duty required by the position.

H.R. 215 eliminates the GS-10 limitation. This change would allow all premium pay for AUO to be calculated on the basis of the employee's actual rate of basic pay.

OPM testified that "The limitation on maximum basic pay for . . . AUO computations has a role in the overall pay system. It recognizes that, as the level of professional responsibility increases, it becomes less and less appropriate to pay premium pay, since employees at higher levels are expected to perform whatever is necessary to see that their jobs get done." (Serial No. 100-58, p. 4.)

The committee believes that since the Federal Government currently provides premium pay for AUO duty, such payments should be based on an employee's actual rate of basic pay.

The subcommittee received testimony that approximately 23,000 Federal employees, mainly in the Departments of Justice and Treasury, receive AUO payments.

The committee notes that not all Federal employees eligible for AUO receive the full 25 percent. In fact, the committee points out that OPM has, by regulation, established a schedule for AUO payments. According to this schedule, an employee who works a mimimum of three but not more than five hours a week of irregular or occasional overtime receives 10 percent of his or her rate of basic pay subject to the GS-10 limitation. An employee who works an average of five but not more than seven hours a week of irregular or occasional overtime receives 15 percent. An employee who works seven but not more than nine hours a week or irregular or occasional overtime work receives 20 percent. An employee who works over nine hours of irregular or occasional overtime receives the maximum of 25 percent. Agencies may also propose their own AUO schedule to OPM for approval.

The subcommittee received testimony on this point as well. "Not every agent is on 25 percent; some have 10 percent, 15 percent, and 20 percent. It's according to the agency and what they put the agent on." (Serial No. 100-58, p. 24.)

The subcommittee also received testimony that the category of Federal employees most likely to perform AUO are criminal investigators, "whose hours of duty are dictated by what criminals do and when they do it." (Serial No. 100-58, p. 3) According to OPM regulations, the unusual duties of Federal criminal investigators include: shadowing suspects; working incognito among those under suspicion searching for evidence; meeting informers; making arrests; and interviewing persons having knowledge of criminal activities. The duties described by OPM illustrate that the workload of criminal investigators is not as easily managed as with other occupations.

The committee notes that among the recipients of an increase in premium pay for AUO would be those Federal employees who are laboring to stop the flow of illegal drugs into the United States. The subcommittee received testimony that passage of the bill would provide a boost in morale for these dedicated Federal employees "[the bill] would boost morale, add a recruitment incentive, and slow the loss of millions of training dollars surrendered when law enforcement employees, with regret, leave the Federal service each year." (Serial No. 100-58, p. 23.)

ANALYSIS OF H.R. 215

Subsection (a) of the bill amends paragraph (2) of section 5545(c) of title 5, United States Code, relating to premium pay for administratively uncontrollable overtime duty. Under the existing provisions, premium pay for such overtime duty is limited to 25 percent of the minimum rate of basic pay for grade GS–10 on the General Schedule. The amendment to section 5545(c)(2) removes the GS–10 limit and allows the premium pay to be calculated on the basis of the employee's actual rate of basic pay.

Subsection (b) of the bill, as amended, provides that the amendment made by subsection (a) shall apply with respect to overtime duty performed on or after the first day of the first applicable pay period beginning more than 560 days after the date of enactment.

COST

The cost estimate prepared by the Congressional Budget Office pursuant to sections 308(a) and 403 of the Congressional Budget Act of 1974 is set forth below.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 27, 1989.

Hon. WILLIAM D. FORD,
Chairman, Committee on Post Office and Civil Service,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 215, a bill to amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a federal employee.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 215.

2. Bill title: A bill to amend title 5, United States Code, with respect to the method by which premium pay is determined for irregular, unscheduled overtime duty performed by a federal employee.

3. Bill status: As ordered reported by the House Committee on Post Office and Civil Service October 25, 1989.

4. Bill purpose: H.R. 215 would change the amount paid to certain federal employees for administratively uncontrollable overtime (AUO). Current law limits the amount of AUO to 25 percent of the annual salary for a GS–10, step 1. H.R. 215 would remove this cap, and allow employees to earn up to 25 percent of their salary in AUO. AUO is generally available to employees of law enforcement agencies participating in surveillance activities.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1990	1991	1992	1993	1994
Estimated authorization level	60	95	95	100	100
Estimated outlays	55	95	95	100	100

In addition to the amounts shown above, there would be about $100,000 annually in direct spending from permanent indefinite appropriations established for the Immigration and Naturalization Service (INS).

This table also does not include any effects of H.R. 215 on federal retirement costs. CBO estimates that any such costs would be insignificant over the five-year period.

The costs of this bill fall mostly within budget function 750.

Basis of Estimate

Based on information provided by Departments of Justice and the Treasury, CBO estimates that enacting H.R. 215 would increase federal costs by about $90 million to $100 million annually, assuming appropriation of the necessary amounts. The estimated outlays are based on historical spending patterns.

This estimate is based on assumptions that the total hours of AUO would continue at current levels—roughly 13 million hours annually—and that the distribution of employees' pay grades would not change from current patterns. We also have assumed that the bill would be enacted around December 1, 1989, and that the new AUO provisions would take effect on February 1, 1990.

The largest component of the estimated cost is for the Federal Bureau of Investigation, at $40 million to $45 million annually. This bill would also affect the costs of the Department of Defense, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, and Firearms, the Secret Service, the Internal Revenue Service, the Customs Service, the INS, and offices of Inspectors General.

While AUO is included in the base pay used in determining retirement benefits, CBO estimates that enactment of H.R. 215 would have no significant budgetary impact on the Civil Service Retirement System over the projection period. We do not expect that enough employees affected by H.R. 215 would retire over the projection period to significantly change the outlays of the Civil Service Trust Fund.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Michael Sieverts and Cathy Ellman.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

OVERSIGHT 1

Under the rules of the Committee on Post Office and Civil Service, the Subcommittee on Compensation and Employee Benefits is vested with legislative and oversight jurisdiction over the subject

matter of this legislation. As a result of its hearings and consideration, the subcommittee concluded that there is ample need and justification for enacting this legislation.

The subcommittee received no report of oversight findings or recommendations from the Committee on Government Operations pursuant to clause 4(c)(2) of House Rule X.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of House Rule XI, the committee has concluded that the enactment of H.R. 215, as amended, will have no inflationary impact on the national economy.

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Section 5545 of Title 5, United States Code

§ 5545. Night, standby, irregular, and hazardous duty differential

(a) * * *

* * * * * * *

(c) The head of an agency, with the approval of the Office of Personnel Management, may provide that—

(1) an employee in a position requiring him regularly to remain at, or within the confines of, his station during longer than ordinary periods of duty, a substantial part of which consists of remaining in a standby status rather than performing work, shall receive premium pay for his duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for irregular, unscheduled overtime duty in excess of his regularly scheduled weekly tour. Premium pay under this paragraph is determined as an appropriate percentage, not in excess of 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10 (or, for a position described in section 5542(a)(3) of this title, of the basic pay of the position), by taking into consideration the number of hours of actual work required in the position, the number of hours required in a standby status at or within the confines of the station, the extent to which the duties of the position are made more onerous by night, Sunday, or holiday work, or by being extended over periods of more than 40 hours a week, and other relevant factors; or

[(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual

basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 percent nor more than 25 percent, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS–10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position.]

(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require the employee to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is an appropriate percentage, not less than 10 percent nor more than 25 percent, at the rate of basic pay for the position, as determined by taking into consideration the frequency and duration of irregular, unscheduled overtime duty required in the position.

* * * * * * *

○